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Supreme Court of the United States

OCTOBER TERM, 1950

No. 147

THE STATE OF WEST VIRGINIA, at the Relation of
DR. N. H. DYER and W. W. JENNINGS, Commis-
sioners for the State of West Virginia to The Ohio
River Valley Water Sanitation Commission, D. Jackson
Savage, Chairman of the State Water Commission, of
the State of West Virginia, and Dr. N. H. Dyer, W. W.
Jennings, Dan B. Fleming, and Dr. C. F. McClintic,
Members of the State Water Commission,

Petitioner,

v.

EDGAR B. SIMS, Auditor of the State of West Virginia,

Respondent.

BRIEF FOR THE PETITIONER

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Petitioner,

v.

EDGAR B. SIMS, Auditor of the State of West Virginia,
Respondent.

BRIEF FOR THE PETITIONER

OPINIONS BELOW

Two opinions were filed in the Supreme Court of Appeals of West Virginia. The majority opinion was written by Judge Fox with two members of the Court concurring. That opinion was filed on April 4, 1950, and appears at page 14 of the Record. It is reported in 133 West Virginia Reports, page —, and in 58 Southeastern Reporter, 2nd Series, page 766. The dissenting opinion was written by Judge Given, with one member of the court concurring. The minority opinion was filed on April 12, 1950, and appears at page 32 of the Record. It is reported in 133 West Virginia Reports, page —, and in 58 Southeastern Reporter, 2nd Series, beginning at page 777.

JURISDICTION

The judgment of the Supreme Court of Appeals of West Virginia was entered April 4, 1950. The Petition for a Writ of Certiorari was filed in this Court on June 26, 1950, and was granted October 9, 1950. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257(3).

QUESTIONS PRESENTED

1. Whether the power of a state of the Union to enter into compacts with other states of the Union to which consent and approval of Congress has been given pursuant to Article I, Section 10, Clause 3, of the Constitution of the United States, can be restricted by the provisions of its own constitution.
2. If the power of a state of the Union to enter into compacts with other states of the Union can be restricted by the provisions of its own constitution, does Article X, Section 4, of the Constitution of the State of West Virginia restrict such power.
3. If Article X, Section 4 of the Constitution of the State of West Virginia can and does restrict the power of that state to enter into compacts with other states of the Union, then, does Article X or any other provision of the Ohio River Valley Water Sanitation Compact subject the State of West Virginia to any obligation in violation of the above mentioned Article and Section of its constitution?
4. Whether ratification and enactment into law of the Ohio River Valley Water Sanitation Compact by the Legislature of the State of West Virginia resulted in an unconstitutional delegation of police power or of legislative authority.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The language of Article I, Section 10, Clause 3 of the Constitution of the United States which is pertinent to this cause is as follows:

“No state shall, without the consent of Congress . . . enter into any agreement or compact with another state. . . .”

2. The language of Article X, Section 4 of the Constitution of West Virginia is as follows:

“Limitation on Contracting of State Debt

4. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State; to suppress insurrection, repel invasion or defend the State in time of war; but the payment of any liability other than that for the ordinary expenses of the State, shall be equally distributed over a period of at least twenty years.”

3. Public Resolution No. 104, of the Seventy-Fourth Congress of the United States, approved June 8, 1936, authorized of the states of the Ohio River drainage basin to enter into an interstate compact for the control and abatement of stream pollution in that basin. The full text of that resolution is set forth as Appendix A of this Brief.

4. Public No. 739-Seventy-Sixth Congress, Chapter 581-Third Session, S3617, approved July 11, 1940, expressly gave the consent and approval of Congress to the Ohio River Valley Water Sanitation Compact in the verbatim form in which it was ratified and enacted into law by all participating states. The full text of that Act, including the full text of the Compact, appears as Appendix B of this Brief.

5. Chapter 38 of the Acts of the West Virginia Legislature, Regular Session, 1939, ratified and enacted into law

the Ohio River Valley Water Sanitation Compact. The full text of that Act, excluding the text of the Compact (which is identical with the text set out in Appendix B) appears as Appendix C of this Brief.

STATEMENT OF THE CASE

The judgment which is presently before this Court for review was entered by the Supreme Court of Appeals of West Virginia in a mandamus proceeding instituted in that Court by Petitioner, upon the relation of the persons named above in the caption (Rec. pp. 1 & 5). By that proceeding Petitioner sought to compel Respondent, Edgar B. Sims, the duly elected and qualified Auditor of the State of West Virginia, to honor a requisition for the issuance of a warrant upon the treasury of the State for the payment of an appropriation previously made by the Legislature of West Virginia of the sum representing that State's proportionate share of the expenses, for the fiscal year 1949-1950, of the Ohio River Valley Water Sanitation Commission, an agency created by an interstate compact duly authorized and approved by Congress (Rec. pp. 3 & 4).

By Public Resolution No. 104, approved June 8, 1936, the Seventy-Fourth Congress of the United States authorized the states situated in the Ohio River drainage basin, including the State of West Virginia, to enter into an interstate compact for the control and abatement of stream pollution in that basin (Appendix A). Thereafter, commissioners from various states of the Ohio River basin were appointed by their respective Governors for the purpose of negotiating a compact in accordance with the foregoing authorization. Following agreement among the negotiating commissioners as to its form, the proposed compact was ratified by appropriate legislative action of the States of New York, Illinois, Kentucky, Indiana, Ohio and West Virginia (Appendix B). Thereafter, by Public

No. 739-Seventy-Sixth Congress, Chapter 581-Third Session, S3617, approved July 11, 1940, the consent and approval of Congress was expressly given to the Ohio River Valley Water Sanitation Compact in the verbatim form agreed upon by the negotiating commissioners and ratified by the above mentioned six states (Rec. pp. 1 & 2 & Appendix B). Subsequently the Compact was ratified by appropriate action of the legislatures and executives of the States of Pennsylvania and Virginia. In evidence of their ratification, adoption and enactment into law of the Ohio River Valley Water Sanitation Compact, that document was formally executed on behalf of each of the above named states, by their respective governors and other appropriate representatives at Cincinnati, Ohio, June 30, 1948 (Rec. p. 2).

Following the formal execution of the Compact, the Ohio River Valley Water Sanitation Commission, which was created by the terms and provisions of the Compact, was organized and launched upon a program designed to fulfill the objectives of the Compact.

Ratification and approval of the Ohio River Valley Water Sanitation Compact had been accomplished on March 11, 1939 (Rec. pp. 1 & 2), by the State of West Virginia through the enactment of Chapter 38, Acts of the West Virginia Legislature, Regular Session, 1939. It is this action of the Legislature of West Virginia which the Supreme Court of Appeals of that State has declared to be unconstitutional.

The Legislature of West Virginia duly appropriated from the general revenues of that State the sum of Twelve Thousand Two Hundred and Fifty Dollars (\$12,250.00), representing West Virginia's proportionate share, computed in accordance with the provisions of the Compact, of the expenses of the Ohio River Valley Water Sanitation Commission for its fiscal year, July 1, 1949 to June 30, 1950 (Rec. p. 2).

Respondent, Edgar B. Sims, as Auditor of the State of West Virginia, is required to issue warrants upon the Treasury of that State before appropriations of its legislature may be paid (Rec. p. 2). On August 26, 1949, Dr. N. H. Dyer, one of the relators in the proceeding below, acting in his capacity as a duly appointed and qualified Commissioner representing the State of West Virginia under the Ohio River Valley Water Sanitation Compact, submitted to Respondent as State Auditor, a requisition for the issuance of a warrant authorizing payment to the Ohio River Valley Water Sanitation Commission of the above mentioned sum appropriated by the Legislature of West Virginia (Rec. p. 3).

Respondent refused to honor the requisition submitted to him as above described and refused to honor such a requisition when, on two subsequent occasions, November 7, 1949 and December 22, 1949, it was resubmitted to him (Rec. p. 3). Proceedings were instituted by Petitioner in the Supreme Court of Appeals of West Virginia, the highest court of the State, seeking a writ of mandamus commanding respondent to issue the warrant requested as above described (Rec. pp. 1 & 5). Upon Petitioner's Application the Supreme Court of Appeals of West Virginia issued a rule commanding Respondent to appear and show cause why the relief sought by Petitioner against him should not be granted (Rec. p. 5). Upon the date set for the return of the rule, Respondent appeared and filed a demurrer (Rec. pp. 6 et seq.) to Petitioner's Application for a Writ of Mandamus and in addition filed an answer (Rec. pp. 7 et seq.) which raised no issues of fact but which set forth various grounds upon which respondent based his refusal to honor the requisition involved (Rec. pp. 7 et seq.).

Since no issues of fact had been raised, the cause was submitted to the Supreme Court of Appeals of West Vir-

ginia upon the pleadings and upon arguments and briefs of counsel (Rec. p. 12). Following consideration of the cause, the Court, by order entered April 4, 1950 (Rec. p. 13), and for reasons set forth in the opinion filed on behalf of the majority of its members (Rec. pp. 14 et seq.), denied the requested writ of mandamus and dismissed Petitioner's application therefor. A dissenting opinion was filed on behalf of the minority members of the Court (Rec. pp. 32 et seq.).

A Petition for a Writ of Certiorari was filed in this Court on June 26, 1950 and was granted on October 8, 1950.

SUMMARY OF ARGUMENT

By the judgment presently under review the Supreme Judicial Court of West Virginia has held that ratification and enactment into law of the Ohio River Valley Water Sanitation Compact was an unconstitutional legislative act on the part of the Legislature of West Virginia for the reason that it violated Article X, Section 4, of the Constitution of that State. Such a decision was necessarily based upon the conclusion that the power of the State to enter into compacts with other states *could* be restricted by the provisions of its own constitution and that the above mentioned section of the West Virginia Constitution *did* restrict that State from entering into this Compact because the provisions of the Compact for the payment of the expenses of its administration constituted a debt of the type prohibited by that section of its constitution. In addition, the Court below viewed the Ohio River Valley Water Sanitation Compact as resulting, if otherwise valid, in an unconstitutional delegation of police power.

Carefully analyzed, the decision of the West Virginia Court presents the four basic problems which have been set forth above as the questions presented in this case. Petitioner's views with respect to those basic problems may be summarized as follows:

(1) The power of a state to enter into compacts with other states of the Union cannot be restricted or circumscribed by provisions of its own constitution for the reason that Article I, Section 10, Clause 3, of the Constitution of the United States proclaims that attribute of sovereignty to be subject only to the limitation that Congress consent to its exercise and thereby withdraws from the states and vests in Congress the power to control interstate agreements.

(2) Article X, Section 4, of the Constitution of West Virginia deals with matters of local fiscal policy and procedure and should not be interpreted as creating a limitation upon the exercise by that State of its inherent sovereign power to enter into compacts with other sovereignties.

(3) If the Legislature of West Virginia did not have the authority to obligate that State to contribute financial support to the joint enterprise contemplated by the Ohio River Valley Water Sanitation Compact, then the Compact can and should be construed as creating no obligation which would impair its validity.

(4) Any delegation of police power which may result from West Virginia's ratification of the Ohio River Valley Water Sanitation Compact is a valid exercise of legislative authority.

ARGUMENT

1. **Whether the Power of a State of the Union to Enter into Compacts with other States of the Union to Which Consent and Approval of Congress Has Been Given Pursuant to Article I, Section 10, Clause 3, of the Constitution of the United States, Can Be Restricted by the Provisions of Its Own Constitution?**

Before a federation of sovereign states such as that established by the Constitution of the United States can be expected to survive, there must be made available to

the member states, as a substitute for force, an effective and efficient means for settling disputes and for adjusting conflicts of interests. Without such machinery any union of states would soon disintegrate under the strain of interstate quarrels and controversies not susceptible to peaceful permanent solution. Having had rather intimate familiarity with early colonial boundary disputes and with the interstate conflicts which caused the Confederacy of the United States of America to fail, the framers of the Constitution of the United States certainly realized that this need had to be filled if the "more perfect Union" envisioned by them was to be achieved. Actually the Constitution makes provision for two methods of resolving possible conflicts between states. The first method is by litigation instituted in the Supreme Court of the United States, while the second method, which is much more flexible, adaptable and effective than the first, is by agreement through interstate compact approved by Congress.

For many years prior to this Country's independence compacts approved by the Crown had been used to bring about the peaceful settlement of inter-colonial disputes. The effectiveness of this method of adjusting such conflicts must have been well known to the drafters of the Constitution and it is therefore only natural that such a proven instrumentality of Government was incorporated in the new Constitution, with approval by Congress substituted for approval by the Crown.

Article I, Section 10, Clause 3 of the Constitution of the United States which provides that "no state shall, without the consent of Congress . . . enter into any agreement or compact with another state . . ." must be recognized as more than a limitation upon the power of the states to enter into compacts with one another. That language should also be treated as an affirmation of the inherent power of the sovereign states to enter into compacts with

each other, free of the possibility of curtailment or limitation of any sort except for the single condition that the Congress of the United States must consent to its exercise. By that clause of the Constitution, control of the power of the states to enter into compacts was withdrawn from state authority and preemptively vested in Congress.

The foregoing interpretation of the scope and effect of the compact clause is supported by the observations of Professor (now Mr. Justice) Frankfurter and James M. Landis, appearing in *34 Yale Law Journal* 685, in an exhaustive treatise entitled "*The Compact Clause of the Constitution, A Study in Interstate Adjustments*." After describing the background and development of the compact clause the authors expressed the following observations at page 691:

"... the Constitution authorizes a State to 'enter into any Agreement or Compact with another State' with 'the Consent of Congress'. Although, on very restricted occasions, availed of from the beginning, the pressure of modern interstate problems has revealed the rich potentialities of this device." (Emphasis added.)

As a footnote to the underlined portion of the above quotation the authors added:

"The Constitution puts this power negatively in order to express the limitation imposed upon its exercise. By putting this authority for State action in a section dealing with restrictions upon the States, the significance of what was granted has probably been considerably minimized." (Emphasis added.)

While none of the foregoing observations have ever been specifically expressed in any reported cases, they are supported inferentially and in principle by a number of decisions of this Court. In *Hinderlider v. LaPlata River &*

Cherry Creek Ditch Company (1938), 304 U. S. 92, 82 L. Ed. 1202, the validity of an interstate water allotment compact, approved by Congress, was sustained in the face of a contrary state court decision holding the compact to be in violation of provisions of the local constitution. This Court not only refused to be bound by the State Court's interpretation and application of provisions of its own constitution, but in addition this Court, by refusing to recognize the particular provisions of the State Constitution as invalidating the interstate compact which was before it, inferentially held that the inherent sovereign right of a state to compact with another could not be circumscribed by its own constitution.

In *Kentucky v. Indiana* (1930), 281 U. S. 163, 74 L. Ed. 784, this Court was called upon to pass upon the validity of a compact between the Commonwealth of Kentucky and the State of Indiana providing for the erection of a bridge over the Ohio River. In an action originating in this Court the Commonwealth of Kentucky sought specific performance of the compact by the State of Indiana. The defense of the State of Indiana was that it was not warranted in proceeding with the performance of the contract in the absence of a final determination of a separate action, then pending in the State Courts, wherein Indiana citizens sought to enjoin performance of the contract on the ground that it was "unauthorized and void." In holding that a decision of the State Court could not determine the controversy and, in effect, asserting that the compact in question was valid no matter what might be the outcome of the pending State Court proceeding, this Court did not discuss or even consider the possibility that state constitutional provisions might be violated. The compact had been entered into by the participating states with the consent of Congress and through procedures which the states themselves considered to be valid. From an examination of the

opinion itself, it does not appear that the Court was concerned with the possibility of there being any violation of a local constitutional provision. It is submitted that this attitude on the part of the Court gave clear indication that it did not consider the compact powers of a state to be subject to limitation or restriction by state constitutional provisions.

The proposition that Article I, Section 10, Clause 3, of the Constitution vested in Congress the sole authority to limit or restrict the powers of the states to compact with one another is supported by the early case of *Poole v. Fleezer* (1837), 11 Peters, 185, 209, 9 L. Ed. 680, 690, in which the Court, after pointing out that the right to settle boundary disputes by compact was a general right of sovereignty, stated:

"It is a right equally belonging to the States of this Union, unless it has been surrendered under the Constitution of the United States. So far from there being any pretense of such a general surrender of the right, that it is expressly recognized by the Constitution, and guarded in its exercise by a single limitation or restriction, requiring the consent of Congress. The Constitution declares that 'no State shall, without the consent of Congress, enter into any agreement or compact with another state'; thus plainly admitting that, with such consent, it might be done; and in the present instance, that consent has been expressly given. The compact, then, has full validity, and all the terms and conditions of it must be equally obligatory upon the citizens of both States." (Emphasis added.)

In *Pennsylvania v. Wheeling & Belmont Bridge Company* (1851), 13 Howard 518, 14 L. Ed. 249, this Court in commenting upon a compact between Kentucky and Virginia with respect to the use and navigation of the Ohio River stated (p. 566):

"This Compact, by the sanction of Congress, has become a law of the Union."

The most cogent language of this Court supporting the contention presently being made is to be found in the opinion written by Chief Justice White in *Virginia v. West Virginia* (1918), 246 U. S. 565, 62 L. Ed. 883. At page 601 and 602 of the U. S. Report the scope and effect of Article I, Section 10, Clause 3 of the Constitution of the United States was analyzed as follows (U. S. Report pp. 601, 602):

*"The vesting in Congress of complete power to control agreements between states, that is, to authorize them when deemed advisable and to refuse to sanction them when disapproved, clearly rested upon the conception that Congress, as the repository not only of legislative power but of primary authority to maintain armies and declare war, speaking for all the states and for their protection, was concerned with such agreements, and therefore was virtually endowed with the ultimate power of final agreement which was withdrawn from state authority and brought within the Federal power. It follows as a necessary implication that the power of Congress to refuse or to assent to a contract between states carried with it the right, if the contract was assented to and hence became operative by the will of Congress, to see to its enforcement. This must be the case unless it can be said that the duty of exacting the carrying out of a contract is not, within the principle of *McCulloch v. Maryland*, 4 Wheat. 316, 4 L. Ed. 579, relevant to the power to determine whether the contract should be made. But the one is so relevant to the other as to leave no room for dispute to the contrary.*

"Having thus the power to provide for the execution of the contract, it must follow that the power is plenary and complete; limited, of course, as we have just said, by the general rule that the acts done for its exertion must be relevant and appropriate to the power. This, being true it further follows, as we have already seen, that by the very fact that the national power is paramount in the area over which it extends, the lawful exertion of its authority by Congress to compel com-

pliance with the obligation resulting from the contract between the two states which it approved is not circumscribed by the powers reserved to the states. . . ."
(Emphasis added.)

There is nothing new in the idea that the States' power of action in a sphere which is of particular significance to future interstate relationships should be placed beyond the influence of state restrictions upon its use. Similar protection against restriction by state action has been given to the power of a state to ratify an amendment to the Federal Constitution, a power somewhat similar to and as fundamental an attribute of state sovereignty as the compact power. In *Hauke v. Smith, Secretary of State of Ohio* (1920), 253 U. S. 221, 64 L. Ed. 871, this Court held that, since Article V of the Federal Constitution established the method to be used in amending the Federal Constitution, the action of the General Assembly of Ohio, ratifying the Eighteenth Amendment, could not be made subject to referendum in that State even though a provision of the Ohio Constitution expressly extended the right of referendum to legislative approval of Federal Constitutional Amendments. If the Constitution of the United States placed the power of ratification of amendments beyond the reach of limitations or restrictions which might be imposed by state constitutions then there certainly could be nothing startling in the proposition that Article I, Section 10, Clause 3, of the Constitution removed the Compact power of the states from the influence of local constitutional provisions.

There is, indeed, ample justification for protecting the compact power of the several states from the unlimited restrictions and limitations which might be imposed upon its exercise by the various state constitutions. Absence of such protection would make every compact between states subject to attack as being in violation of some provision of the constitution of one of the signatory states. A recog-

nition of the compact clause as a grant of authority for state action or as a withdrawal from state authority of jurisdiction to limit or restrict the power of the states to compact with one another would assure all states of the Union that, with the consent of the Congress, they can deal with one another through interstate compacts without hesitation as to their respective powers to assume contemplated obligations and responsibilities. With such assurance compacting states would not be faced with the possibility that a carefully negotiated compact might at any time collapse by reason of a subsequently discovered lack of power on the part of one of the parties and the states could, therefore, negotiate compacts for the adjustment of disputes between them or for the solution of common regional problems with confidence as to the validity of any understanding ultimately reached between them. Without such assurance no state could risk proceeding with the fulfillment of its responsibilities under a compact for fear that one or more of the other contracting states might subsequently be held to have exceeded its authority in entering the compact and thus be prevented from performing its end of the bargain.

The compact can continue to be a practical and effective vehicle for interstate cooperation only if it is unequivocally established that all of the states of the Union are vested with equal powers to compact with one another regardless of the peculiarities of their respective constitutions or the views of their local courts.

We submit that where the procedure established by the Federal Constitution for the creation of interstate compacts is followed, any inhibitory provisions of a state constitution must be disregarded.

2. If the Power of a State of the Union to Enter into Compacts with other States of the Union Can Be Restricted by the Provisions of Its Own Constitution, Does Article X, Section 4, of the Constitution of the State of West Virginia Restrict Such Power?

If this Court should conclude that the power of a State to enter into compacts with other States can be restricted by the provisions of its own constitution, it must then be decided whether Article X, Section 4, of the Constitution of the State of West Virginia *does* restrict such power. As a necessary part of the decision which this Court is asked to review, the Supreme Court of Appeals of West Virginia interpreted and applied the above mentioned provision of the Constitution of that State in a manner producing such a restrictive effect.

Article X, Section 4 of the West Virginia Constitution reads as follows:

"Limitation on Contracting of State Debt

4. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State; to suppress insurrection; repel invasion or defend the State in time of war; but the payment of any liability other than that for the ordinary expenses of the State, shall be equally distributed over a period of at least twenty years."

While not expressly stated in either opinion filed in the Court below, the judgment here under consideration necessarily constitutes a holding that by prohibiting the state from contracting any debt the above quoted constitutional provision prevents the state from entering into any interstate compact under which the state may be required to contribute financial support to the accomplishment of any of its objectives. Since practically every type of joint endeavor among states requires administration necessarily entailing some expense, the interpretation placed by the

West Virginia Court upon the restrictions of Article X, Section 4, of the West Virginia Constitution would reduce to extremely narrow limits the sphere of interstate cooperation permissible to that state.

This Court is not bound by the decision of the Court below with respect to local constitutional questions insofar as they relate to the validity of the Compact which is the subject matter of this litigation, or with respect to the meaning of the Compact and this Court may reverse the judgment of the Supreme Court of Appeals of West Virginia notwithstanding the fact that state constitutional questions are involved in part. Such jurisdiction of this Court is clearly indicated by the action taken in *Delaware River Joint Toll Bridge Commission v. Colburn* (1940), 310 U. S. 419, 84 L. Ed. 1287, and *Hinderlider v. LaPlata River & Cherry Creek Ditch Co.* (1938), 304 U. S. 92, 110, Note 12, 82 L. Ed. 1202, 1212, 58 S. Ct. 803.

This Court is the "final constitutional arbiter" of questions involving the validity of compacts between states and if the conclusion is reached that the State Court's interpretation of the language of Article X, Section 4, of the State Constitution was unwarranted, then the West Virginia Court may be reversed. If this Court cannot reverse the decision of the Court below in this respect, the State of West Virginia would be enabled to pass upon the validity of its own acts with respect to the Compact and upon its own rights under the Compact contrary to the pronouncement of this Court in *Kentucky v. Indiana* (1930), 281 U. S. 163, 74 L. Ed. 784, to the effect that states cannot determine their rights "inter sese" and that this Court "must pass upon every question essential to such a determination although local legislation and questions of state authorization may be involved."

For the reasons hereinafter set forth, Petitioner contends that the Court below erroneously construed and

applied the provisions of Article X, Section 4 of the West Virginia Constitution and that the decision below may and should be reversed on that ground.

The power of any state to enter into compacts or agreements with other states is an inherent power of sovereignty.

Pooler v. Fleege (1837), 11 Peters, 185, 209, 9 L. Ed. 680, 690;

Rhode Island v. Massachusetts (1838), 12 Peters 657, 725, 9 L. Ed. 1233, 1261.

That power was considered by the drafters of the Constitution of the United States to be of such significance to the formation of "a more perfect Union" as to warrant the inclusion of a provision, which, as above pointed out, confirmed to the States the continuance of that power and at the same time placed in the Congress of the United States exclusive control over its exercise. It is a power which has been characterized as a constitutional substitute for force as a means of adjusting interstate problems and disputes. Any curtailment by the States of their power to use such an instrumentality of statecraft should, if permitted at all, be scrutinized most carefully and limitations or restrictions thereon should not be created by implication but should be recognized only if imposed in clear and unequivocal language.

Notwithstanding the importance of the Compact as a vehicle for interstate adjustments and for interstate cooperation, by treating as a "debt" West Virginia's "agreement" under certain circumstances to bear a proportionate part of the expenses of administering the Ohio River Valley Water Sanitation Compact, the Supreme Court of Appeals of West Virginia has, by inference, read into the Constitution of that State a narrow and confining limitation upon the power of the State to deal with sister states or to participate in any cooperative interstate undertaking.

An interpretation of Article X, Section 4, of the West Virginia Constitution as prohibiting entirely the assumption of any responsibility to contribute to the payment for or to share in the expenses of conducting any joint enterprise among states would substantially deprive West Virginia of the use of its power to compact with other states or to take any effective part in any cooperative interstate effort.

The restriction of Article X, Section 4, of the West Virginia Constitution, which merely says that "no debt shall be contracted" by that State, except under certain expressed circumstances, on its face, relates only to normal fiscal matters and was not intended to circumscribe the compact powers of the State of West Virginia. This conclusion is borne out by the fact that the other Sections of Article X, all of which are in *pari materia*, involve only normal fiscal affairs of the state. The subject matter of Article X, the full text of which is set forth as Appendix D of this Brief, is amply illustrated by the following listing of the subtitles which introduce its various Sections:

"ARTICLE X"

1. Taxation and Finance
2. Capitation Tax
3. Receipts and Expenditures of Public Monies
4. Limitation on Contracting of State Debt
5. Power of Taxation
6. Credit of State Not to Be Granted in Certain Cases
7. Duties of County Authorities in Assessing Taxes
8. Bonded Indebtedness of Counties, Etc.
9. Municipal Taxes to Be Uniform"

The intended scope of Article X, Section 4, of the West Virginia Constitution has been expressed by the Supreme Court of Appeals of that State in the following language in *Bates v. State Bridge Commission* (1930), 109 W. Va. 186, 153 S. E. 305:

"When our constitution of 1872 was formed, the experience of the mother state with debts contracted by

her, and with suits to compel payment, were fresh in the minds of the framers of that Constitution. Numerous suits ending in heavy judgments and costs had been prosecuted against the Commonwealth; illiberal contracts and guaranties of enterprises had been made by government agencies detrimental to her interests; public officers and agencies had not been always zealous and careful in the conduct of public affairs; and juries leaned toward the individual as against the Commonwealth. With this experience the framers of the Constitution of 1872 provided that this State should not contract indebtedness, except in specified instances; and that the State should never be made defendant in any court of law or equity. The debts against which the prohibition lies are those for which suit may be maintained or the states revenues and resources pledged or sequestered."

Obviously the Court quoted above considered Article X, Section 4, as a prohibition against obligations which might arise in the normal course of the State's business and did not by any means consider it as a limitation upon its sovereignty. Nothing in the language of Article X, Section 4, itself, justifies an extension of its application beyond the area defined by the above quoted language and into the realm of interstate relations. No ground for such an extension can be found in any of the other Sections of Article X which must be considered in connection with any construction of Section 4. Only by inference could the West Virginia Court use Article X, Section 4, as a basis for holding void the act of the West Virginia Legislature which ratified and enacted into law the Ohio River Valley-Water Sanitation Compact. It is submitted that no such inference is warranted by the constitutional provisions under consideration and it is further submitted that West Virginia's power to participate in the cooperative effort represented by the Ohio River Valley Water Sanitation Compact should not be denied to it by inference.

Furthermore, a careful examination of Article X of the West Virginia Constitution will disclose that Section 4 was not intended to prohibit all financial commitments by the State but was only designed to limit the creation of funded indebtedness. Section 4 of Article X prohibits the contraction of a "debt" except in specified cases, and then goes on to say that the payment of any "liability" other than for "ordinary expenses" shall be equally distributed over a period of at least twenty years. This indicates that the words "debt" and "liability" are used synonymously. What is there being discussed is clearly a funded debt as evidenced by the insistence that it should be a long-term obligation. This is in contra-distinction to the "ordinary expenses" which obviously the state must meet regularly.

This interpretation of the terminology of Section 4 would seem to be borne out by the provisions of Section 5 which reads as follows:

"Power of Taxation"

5. The power of taxation of the Legislature shall extend to provisions for the payment of the State debt, and interest thereon, the support of free schools, and the payment of the annual estimated expenses of the State, but whenever any deficiency in the revenue shall exist in any year, it shall, at the regular session thereof held next after the deficiency occurs, levy a tax for the ensuing year, sufficient with the other sources of income, to meet such deficiency, as well as the estimated expenses of such year."

Here again, the distinction is made between the "state debt," with interest, in other words a funded obligation, and the "annual estimated expenses" of the state; i. e., the "ordinary expenses" referred to in Section 4, which are the current costs of operating state agencies, and among which logically falls West Virginia's proportion of the cost of operating the Ohio River Valley Water Sanitation Commission.

Sections 7 and 8 make this distinction even clearer. Section 7 reads as follows:

"Duties of County Authorities in Assessing Taxes

7. County authorities shall never assess taxes, in any one year, the aggregate of which shall exceed ninety-five cents per one hundred dollars valuation except for the support of free schools; payment of indebtedness existing at the time of the adoption of this Constitution; and for the payment of any indebtedness with the interest thereon, created under the succeeding section, unless such assessment, with all questions involving the increase of such aggregate, shall have been submitted to the vote of the people of the county, and have received three-fifths of all the votes cast for and against it."

Note that here the quotation "payment of indebtedness" is in reference to a funded debt carrying interest.

Section 8 reads as follows:

"Bonded Indebtedness of Counties, Etc.

8. No county, city, school district, or municipal corporation, except in cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed to become indebted, in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five per centum on the value of the taxable property therein to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness; nor without, at the same time, providing for the collection of a direct annual tax, sufficient to pay, annually, the interest on such debt, and the principal thereof, within, and not exceeding thirty-four years: Provided, That no debt shall be contracted under this section, unless all questions connected with the same, shall have been first submitted to a vote of the people, and have received three-fifths of all the votes cast for and against the same."

Here, once more, the words "indebted," "indebtedness" and "debt" are all used with reference to funded obligations continuing over a period of years and carrying interest.

The foregoing comments with regard to the interpretation to be given to Article X, Section 4 of the West Virginia Constitution are supported by the language of the Supreme Court of Appeals of West Virginia in *Dickinson v. Talbott* (1933), 114 W. Va. 4, 170 S. E. 425. That case involved the validity of bonds which the State proposed to issue for the purpose of funding various unpaid obligations which had arisen as the result of the State's inability to pay operating expenses from revenues received. Throughout the opinion sustaining the validity of the bond issue, the Court differentiated between a "debt" inhibited by the constitutional provision and obligations relating to the payment of current operating expenses and did so in a fashion which clearly indicates that the Court did not consider the prohibition of Article X, Section 4, to be applicable to current operating expenses but only considered it to be directed against long term funded obligations of the type represented by the bond issue before it.

Present consideration of the proper interpretation to be given to Article X, Section 4 might well be governed by the following language from the last cited case:

Page 5

"The state's constitutional requirements are for the preservation of the state and the maintenance of its integrity and for the protection of the people. Constitutional limitations must not be so construed as to be subversive of their very purpose. . . ."

Page 7

"Apropos of both sections 4 and 5, Article X, West Virginia Constitution, it is not to be considered that the framers of our Constitution or the people of the

state in ratifying and approving the same, meant to place barriers in the path of the state officials and the legislators, so circumscribing the fiscal affairs of the state as to create impossibility of escape from embarrassing situations."

An examination of the constitutions of most of the states of the United States and of a number of the other states who are parties to the Compact in question shows similar limitations on the incurring of debts, but in all cases the debts referred to are substantial obligations of a fixed nature to be retired over a period of years, and bearing interest. A current charge for operating an agency, following regular annual or biennial budget approval by the Governor and appropriation by the legislature, falls into an entirely different category, i. e., that of meeting current expenses of a state, and we submit that the inhibitions of the West Virginia Constitution against the incurring of debt would not, therefore, affect in any way any of the provisions of the Compact.

3. **If Article X, Section 4, of the Constitution of the State of West Virginia Can and Does Restrict the Power of That State to Enter into Compacts with other States of the Union, Then Does Article X, or Any Other Provision of the Ohio River Valley Water Sanitation Compact, Subject the State of West Virginia to Any Obligation in Violation of the Above Mentioned Article and Section of Its Constitution?**

Should this Court conclude that a state may by constitutional provision be restricted in its power to compact with other states and also conclude that Article X, Section 4, of the Constitution of West Virginia was properly interpreted as a limitation upon that State's power to compact, it would then become necessary for this Court to consider the third question involved in this cause. It is the contention of Petitioner that, if Article X, Section 4, of the

West Virginia Constitution can and does limit the power of that State to enter into a compact, the provisions of the Ohio River Valley Water Sanitation Compact should, if at all possible, be given a construction consistent with such limitation and favorable to its validity. It is the universal rule of statutory construction that the constitutionality of any legislative act will be sustained, if, by any reasonable interpretation it is possible to do so. Since it is never assumed that any legislative body intends to enact unconstitutional legislation, it will be held to have done so only in case of a plain infraction of the constitution from which there is no escape.

Kinney v. County Court (1931), 110 W. Va. 17, 156 S. E. 748;

Bates v. State Bridge Commission (1930), 109 W. Va. 186, 153 S. E. 305.

The construction of the Ohio River Valley Water Sanitation Compact which was ratified and enacted into law by Chapter 38, Acts of the West Virginia Legislature, Regular Session, 1939, must be controlled by the same principles which govern the construction of any other legislative action. It must be presumed that the negotiators who initially drafted the Compact and the legislators who ultimately ratified it and enacted it into law in their respective states were intending to formulate an instrumentality of government which was fully within their powers to create and it must also be presumed that no one of them intended to exceed their own powers or expected any other negotiator or legislator to perform any unauthorized or invalid act. The Compact and each of its provisions must therefore be given that construction which is most favorable to its validity.

An examination of the language of the Compact itself will disclose that the only references made therein to fi-

nances or to financial obligations appear in Article V, second, third and fifth paragraphs and in Article X, which read as follows:

“ARTICLE V.

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“The Commission shall submit to the Governor of each State, at such time as he may request, a budget of its estimated expenditures for such period as may be required by the laws of such State for presentation to the legislature thereof.

“The Commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time to the inspection of such representatives of the respective signatory States as may be only constituted for that purpose:

.

“The Commission shall not incur any obligation of any kind prior to the making of appropriations adequate to meet the same; nor shall the Commission pledge the credit of any of the signatory States, except by and with the authority of the legislature thereof.”

“ARTICLE X

“The signatory States agree to appropriate for the salaries, office and other administrative expenses, their proper proportion of the annual budget as determined by the Commission and approved by the Governors of the signatory States, one-half of such amount to be prorated among the several states in proportion to their population within the District at the last preceding Federal census, the other half to be prorated in proportion to their land area within the District.”

Nothing contained in the quoted portions of Article V may be construed as creating a debt or obligation on the part of any signatory state. On the contrary, those provisions reflect only a studied effort to keep the fiscal affairs of the Ohio River Valley Water Sanitation Compact sub

ject to the supervision, discretion and control of the participating states.

Only in Article X is there to be found any language which may be interpreted as subjecting any signatory state to a financial obligation. Even that Section expressly provides for budgetary approval by the Governors of the signatory States, thus assuring to each state a full measure of control over the expenditures of the Commission. While Article X may include language capable of being construed as binding future legislatures to make appropriations, such an interpretation is neither mandatory nor inescapable. The language of Article X can, and, if necessary to sustain the constitutionality of the Compact, should be construed as merely being a declaration on the part of each signatory state of the intention to seek and to exert every effort to obtain from its legislature the periodic appropriation of its proportion, computed in accordance with the formula set forth in that Article, of the expenses of administering the Compact and conducting the operations of the Ohio River Valley Water Sanitation Commission.

It is submitted that if the language of Article X, Section 4, of the West Virginia Constitution can and does limit the general compact powers of that State, then the Compact under consideration can and must be construed in a manner consistent with its constitutionality, as was done by the minority members of the Supreme Court of Appeals of West Virginia.

It would appear that the Court below misconceived the nature of the obligation covered by the requisition which Respondent disapproved. Here was no case of a demand on the State of West Virginia to make a payment under a contract, the performance of which it was resisting. On the contrary, the head of the executive branch of the state had approved the budget of the Commission *without which approval no request for funds could be made to the* ~~legislature~~

lature. In turn, the legislative branch of the state had passed the necessary appropriation resolution *without which appropriation* no payment could be made. How did this differ from the regular appropriations of the State of West Virginia to defray the usual and ordinary expenses of its other agencies?

A reading of the Compact shows the studied effort that was made to avoid any semblance of committing the signatory states to financial obligations. Under Article V, the budget of the Commission must be submitted to the Governor of each separate state for presentation to that state's legislature, and Article V goes on to say that the Commission cannot incur any obligation until the appropriation is made. Furthermore, under Article X, a condition precedent to the agreement by a state to appropriate its share of the expenses is the approval by its Governor of this budget. If the time should ever arise when a Governor refuses to approve the budget, or after approval, a legislature refuses to make the appropriation, an interesting question of enforcement might arise, but under the existing conditions it is hard to understand the tortuous construction of the West Virginia Constitution which would make this conditional obligation a prohibited debt. Such a construction would seem to be a flagrant violation of the accepted rule of constitutional law that a legislative enactment will be upheld unless clearly in violation of the pertinent constitution.

4. Whether Ratification and Enactment into Law of the Ohio River Valley Water Sanitation Compact by the Legislature of the State of West Virginia Resulted in an Unconstitutional Delegation of Police Power.

Without reference to any express provision of the West Virginia Constitution, but relying entirely upon general legal principles, a majority of the members of the Court

below held the Ohio River Valley Water Sanitation Compact to be invalid, insofar as West Virginia was concerned, on the ground that the Compact results in an unauthorized delegation of the police power of that State. With that conclusion the minority of the Court again disagreed and in the separate dissenting opinion expressed the view that no delegation of police power was intended or was, in fact, accomplished by the provisions of the Compact.

Any finding of an improper delegation of police power would have to be based upon Articles VI and IX of the Compact. The second paragraph of Article VI provides a minimum standard for the treatment of sewage discharged into waters within the jurisdiction of the Ohio River Valley Water Sanitation Commission, and in addition provides that, in specific instances such higher degree of treatment shall be used as may be determined to be necessary by the Commission after investigation, notice and hearing.

The third paragraph of Article VI provides that all industrial wastes discharged into waters within the jurisdiction of the Commission shall be modified or treated, within a time reasonable for the construction of works, to such a degree as may be determined to be necessary by the Commission.

Paragraph five authorizes the Commission to adopt rules, regulations and standards for administering any of the provisions of the Article.

Article IX provides for the issuance of orders by the Commission to compel the abatement of any discharge of sewage or industrial wastes in violation of the Compact. No order may be effective against any corporation, person or entity within a state *unless and until it receives the assent of not less than a majority of the Commissioners from such state.* Article IX also authorizes the Commission to enforce compliance with its orders through actions in

tuted in state courts of general jurisdiction or in United States District Courts.

Thus it may be seen that what has been delegated to the Commission is the power:

- (a) to set standards in excess of the minimum set by the Compact for the treatment of sewage;
- (b) to set standards for the modification or treatment of industrial wastes;
- (c) to adopt rules and regulations for the administration of the Compact;
- (d) to issue and to enforce orders against violators of the Compact, but only if assent is obtained from a majority of the Commissioners from the state in which the violator is located.

The powers conferred upon the Commission by the Compact are merely administrative duties with respect to the establishment and enforcement of the standards of sewage and waste treatment necessary to the accomplishment of the objective of the Compact, namely, the control and abatement of pollution in the Ohio River basin. Varying conditions throughout the basin made it impossible for the states participating in the Ohio River Valley Water Sanitation Compact to attempt to set forth therein any workable set of standards for the entire basin. The establishment and enforcement of such standards would necessarily require the continuing study and attention of professional sanitary engineers. For these obvious reasons it was necessary that the participating states confer upon the Commission charged with the responsibility of administering the Compact the duty of determining after proper research and deliberation the details of the sewage and waste treatment standards which would have to be established if the objectives of the Compact were to be realized.

It is now quite generally recognized that a legislative body may properly delegate to selected instrumentalities

the duty of establishing subordinate rules and regulations within prescribed limits. This practice is fully discussed in *Panama Refining Company v. Ryan* (1934), 293 U. S. 388, 426 et seq., 79 L. Ed. 446, 462 et seq. In *Buttfield v. Stranahan* (1903), 192 U. S. 470, 496, 48 L. Ed. 525, 535, this Court approved an Act of Congress of March 2, 1897, entitled "An Act to Prevent the Importation of Impure and Unwholesome Tea" (29 Stat at L. 604 Chapt. 358). In that Act the Secretary of the Treasury was authorized and directed to "fix and establish uniform standards of purity, quality and fitness for consumption of all kinds of teas imported into the United States." This Court held that the foregoing language fixed a primary standard and conferred upon the Secretary of the Treasury the mere executive duty to effectuate the legislative policy declared in the statute. The Court stated that:

"Congress legislated on the subject so far as was reasonably practical, and from the necessities of the case was compelled to leave to executive officials the duty of bringing about the result pointed out by the statute. To deny the power of Congress to delegate such a duty would, in effect, amount but to declaring that the plenary power vested in Congress to regulate foreign commerce could not be efficaciously asserted."

It is submitted that no delegation of powers will be found in the Ohio River Valley Water Sanitation Compact which violates the permissible limits set forth in the above cited cases or in the many other cases wherein this Court has sustained the delegation of rule making powers to various governmental agencies. An adequate primary standard for any treatment requirements or regulations to be established by the Commission will be found in Article I, of the Compact and in the first paragraph of Article VI which respectively read as follows:

“ARTICLE I

“Each of the signatory States pledges to each of the other signatory States faithful cooperation in the control of future pollution in and abatement of existing pollution from the rivers, streams, and waters in the Ohio River basin which flow through, into or border upon any of such signatory States, and in order to effect such object, agrees to enact any necessary legislation to enable each such State to place and maintain the waters of said basin in a satisfactory sanitary condition, available for safe and satisfactory use as public and industrial water supplies after reasonable treatment, suitable for recreational usage, capable of maintaining fish and other aquatic life, free from unsightly or malodorous nuisances due to floating solids or sludge deposits and adaptable to such other uses as may be legitimate.”

“ARTICLE VI

“It is recognized by the signatory States that no single standard for the treatment of sewage or industrial wastes is applicable in all parts of the District due to such variable factors as size, flow, location, character, self-purification, and usage of waters within the District. The guiding principle of this compact shall be that pollution by sewage or industrial wastes originating within a signatory State shall not injuriously affect the various uses of the interstate waters as herein before defined.”

The propriety of clothing boards and commissions with judgment and discretion in carrying out legislative purposes has frequently been recognized by the Supreme Court of Appeals of West Virginia.

Bates v. State Bridge Commission (1930), 109 W. Va. 186, 153 S. E. 30;

State v. Runner (1943), 126 W. Va. 280, 27 S. E. (2d) 823;

West Central Producers Cooperative v. Commission (1942), 124 W. Va. 81, 20 S. E. (2d) 797.

In *State v. Banner* (1943), 126 W. Va. 280, 27 S. E. (2d) 823, cited above, the West Virginia Court sustained the validity of legislation which vested the State Department of Health with authority to establish and enforce regulations to control the sale of milk. The Court discussed the general limitations upon the right of the legislature to delegate to a board or commission the power to make regulations and pointed out the need for legislatively established standards to guide the administrative body in the formulation of its regulations. Although the particular legislative act under consideration did not contain any standards for the regulations which the State Health Council was authorized to promulgate, the delegation of this authority was sustained by the West Virginia Court on the ground that it related to matters of public health and that the establishment of standards was therefore not necessary. On this point the Court made the following observations which are equally applicable to any delegation of power attempted by the Ohio River Valley Water Sanitation Compact which also deals with matters of public health (page 282):

"This general rule (power of legislative body to delegate rule making authority) however, is in some degree flexible, requiring less definite standards in cases where the establishment thereof is not practicable owing to the character of the business involved . . . but of more importance than the present case is another uniformly recognized exception to the general rule by which the legislature is much less restricted when its delegation of legislative authority is to an administrative body created for the care of public health. Ordinarily the power to delegate legislative authority must be found in the Constitution, but, where the subject matter of the administrative authority is public health, the power is uniformly held not to originate in the Constitution, but from the police power. This vast undefinable reservoir of power inheres in the legislative body of

every sovereign state wholly independent of the Constitution. . . . Courts generally, therefore, take the position that regulations and rules duly promulgated by a legally constituted board of health will be construed as valid wherever possible if reasonably calculated to achieve the result intended by the Legislature."

The Court below did not actually hold that the Legislature of West Virginia was not empowered to delegate authority to establish and enforce regulations such as are contemplated by the Ohio River Valley Water Sanitation Compact, nor did the Court hold that any such attempted delegation was improper because of the absence of standards. Actually the Court (Record Page 31) stated that the Legislature of West Virginia possesses the power to delegate police power to governmental agencies within the State. The objection of the West Virginia Court to the alleged delegation of police power which it found in the Ohio River Valley Water Sanitation Compact was based upon the opinion that the Legislature of the State did not possess the power to delegate any portion of the police power to another state or to the Federal Government or to a combination of the two.

Certainly there is nothing fundamentally wrong with delegating such powers to outside agencies. If there were, then the Federal Government would be entirely without police power since it has only those powers which through the Constitution of the United States were delegated to by the several individual states. Under the rationale of the opinion below any attempt by the States to vest police power in the Federal Government would have been beyond the power of those States.

By Compact between the States of New York and New Jersey the boundary line between the two states was to be the middle of the Hudson River, New York Bay and the

water between Staten Island and New Jersey. In addition the Compact provided that New York was to have "exclusive jurisdiction" over all the water of the bay of New York and the waters of the Hudson River west of Manhattan Island and over the land covered by said waters to the low water mark on the New Jersey side. This delegation by one state to another of police powers over area remaining subject to the sovereignty of the former was sustained by this Court in *Central Railroad Company of New Jersey v. Jersey City* (1908), 209 U. S. 473, 52 L. Ed. 896.

In *Wedding v. Meyler* (1904), 192 U. S. 573, 48 L. Ed. 570, this Court recognized and applied a provision contained in a Compact between Virginia and Kentucky by which states to be formed on the north side of the Ohio River were to have concurrent jurisdiction with Kentucky over the Ohio River flowing between them. This Court sustained the validity of service of summons in an Indiana law suit although the service was accomplished on a steamboat on the Ohio River, found by the jury to have been on the Kentucky side of the low water mark and therefore within the boundaries of Kentucky.

An exchange of jurisdiction over areas within their respective states was provided by an early Compact between Virginia and Maryland. This concurrent delegation of police power by each state to the other has been approved by this Court in *Wharton v. Wise* (1894), 153 U. S. 155, 38 L. Ed. 669.

The Ohio River Valley Water Sanitation Commission is not an agency entirely independent of the states creating it and whose representatives are on it. The Commission as a whole is the agency of each participating state, even though its membership is drawn from all the states. No commission order whatsoever may go into effect without the consent of a majority of the commissioners of a major

ity of the signatory states, and no order upon a municipality, corporation or person in any state may go into effect without the consent of a majority of the commissioners of that particular state. Thus, regardless of the powers and duties which may have been conferred upon the Commission as a whole, the enforcement power with respect to any particular state has been retained in the hands of the appointees of that state. It is difficult to read from this situation any improper delegation of the police power of the state.

Properly construed the Ohio River Valley Water Sanitation Compact makes no improper delegation of any police or legislative powers. At most the Compact confers upon a joint agency created by the participating states limited powers of enforcement and limited power to set standards, neither of which violates accepted principles. The agency upon which such powers are conferred i. e., the Ohio River Valley Water Sanitation Commission, is a common agency of all the States participating in the Compact. It is a governmental agency of the State of West Virginia on which that State jointly with the other States could properly confer the limited powers herein above discussed.

CONCLUSION

For the reasons set forth above it is urged that the judgment of the Supreme Court of Appeals of West Virginia here under review be reversed.

Respectfully submitted,

JOHN B. HOLLISTER,

Attorney for Petitioner.

APPENDIX A

[PUBLIC RESOLUTION—No. 104—74TH CONGRESS]

[H. J. Res. 377]

JOINT RESOLUTION

To enable the States of Maine, New Hampshire, New York, Vermont, Massachusetts, Rhode Island, Connecticut, Pennsylvania, West Virginia, Kentucky, Indiana, Illinois, Tennessee, and Ohio to conserve and regulate the flow of and purify the waters of rivers and streams whose drainage basins lie within two or more of the said States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of the Congress of the United States is hereby given to the States of Maine, New York, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Pennsylvania, West Virginia, Kentucky, Indiana, Illinois, Tennessee, and Ohio, or any two or more of them, to negotiate and enter into agreements or compacts for conserving and regulating the flow, lessening flood damage, removing sources of pollution of the waters thereof, or making other public improvements on any rivers or streams whose drainage basins lie within any two or more of the said States.

Sec. 2. No such compact or agreement shall be binding or obligatory upon any State a party thereto unless and until it has been approved by the legislatures of each of the States whose assent is contemplated by the terms of the compact or agreement and by the Congress.

Approved, June 8, 1936.

APPENDIX B

[PUBLIC No. 739—76TH CONGRESS]

[CHAPTER 581—3D SESSION]

[S. 3617]

AN ACT

Granting the consent and approval of Congress to an interstate compact relating to control and reduction of pollution in the Ohio River drainage basin.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent and approval of Congress is hereby given to an interstate compact relating to the control and reduction of the pollution of the streams of the Ohio River drainage basin negotiated and entered into or to be entered into under authority of Public Resolution Numbered 104, Seventy-fourth Congress, approved June 8, 1936, and now ratified by the States of New York, Illinois, Kentucky, and Indiana, and by the State of Ohio (whose ratification is to go into effect at the time at which the States of New York, Pennsylvania, and West Virginia enter into said compact as parties and signatory States), also by the State of West Virginia (whose ratification is to go into effect at the time at which the States of New York, Ohio, Virginia, and Pennsylvania enter into said compact as parties and signatory States), which compact reads as follows:

"SECTION 1.—

"OHIO RIVER VALLEY WATER SANITATION
COMPACT

"BETWEEN THE STATES OF ILLINOIS, INDIANA, KENTUCKY, NEW YORK, OHIO, PENNSYLVANIA, TENNESSEE, AND WEST VIRGINIA.

"Pursuant to authority granted by an Act of the 74th Congress of the United States, Public Resolution 104, approved June 8, 1936, conferences of delegates appointed to draft the compact were held at Cincinnati, Ohio, on Nov. 20, 1936; Jan. 17, 1938; May 24, 1938; June 13, 1938; October 11, 1938.

"Whereas, a substantial part of the territory of each of the signatory states is situated within the drainage basin of the Ohio River; and

"Whereas, the rapid increase in the population of the various metropolitan areas situated within the Ohio drainage basin, and the growth in industrial activity within that area, have resulted in recent years in an increasingly serious pollution of the waters and streams within the said drainage basin, constituting a grave menace to the health, welfare, and recreational facilities of the people living in such basin, and occasioning great economic loss; and

"Whereas, the control of future pollution and the abatement of existing pollution in the waters of said basin are of prime importance to the people thereof, and can best be accomplished through the cooperation of the States situated therein, by and through a joint or common agency;

"Now, Therefore, The States of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee, and West Virginia do hereby covenant and agree as follows:

"ARTICLE I

"Each of the signatory States pledges to each of the other signatory States faithful cooperation in the control of future pollution in and abatement of existing pollution from the rivers, streams, and waters in the Ohio River basin which flow through, into or border upon any of such signatory States, and in order to effect such object, agrees to enact any necessary legislation to enable each such State to place and maintain the waters of said basin in a satisfactory sanitary condition, available for safe and satisfactory use as public and industrial water supplies after reasonable treatment, suitable for recreational usage, capable of maintaining fish and other aquatic life, free from unsightly or malodorous nuisances due to floating solids or sludge deposits, and adaptable to such other uses as may be legitimate.

"ARTICLE II

"The signatory States hereby create a district to be known as the Ohio River Valley Water Sanitation Dis-

trict, hereinafter called the District, which shall embrace all territory within the signatory States, the water in which flows ultimately into the Ohio River, or its tributaries.

ARTICLE III

"The signatory States hereby create the 'Ohio River Valley Water Sanitation Commission,' hereinafter called the Commission, which shall be a body corporate, with the powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the signatory States or by act or acts of the Congress of the United States.

ARTICLE IV

"The Commission shall consist of three commissioners from each State, each of whom shall be a citizen of the State from which he is appointed, and three commissioners representing the United States Government. The commissioners from each State shall be chosen in the manner and for the terms provided by the laws of the States from which they shall be appointed, and any commissioner may be removed or suspended from office as provided by the law of the State from which he shall be appointed. The commissioners representing the United States shall be appointed by the President of the United States, or in such other manner as may be provided by Congress. The commissioners shall serve without compensation, but shall be paid their actual expenses incurred in and incident to the performance of their duties; but nothing herein shall prevent the appointment of an officer or employee of any State or of the United States Government.

ARTICLE V

"The Commission shall elect from its number a chairman and vice chairman, and shall appoint, and at its pleasure remove or discharge, such officers and legal, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall fix and determine their duties, qualifications and compensation. It shall

adopt a seal and suitable by-laws, and shall adopt and promulgate rules and regulations for its management and control. It may establish and maintain one or more offices within the District for the transaction of its business, and may meet at any time or place. One or more commissioners from a majority of the member States shall constitute a quorum for the transaction of business.

"The Commission shall submit to the Governor of each State, at such time as he may request, a budget of its estimated expenditures for such period as may be required by the laws of such State for presentation to the legislature thereof.

"The Commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time to the inspection of such representatives of the respective signatory States as may be duly constituted for that purpose.

"On or before the first day of December of each year, the Commission shall submit to the respective governors of the signatory States a full and complete report of its activities for the preceding year.

"The Commission shall not incur any obligations of any kind prior to the making of appropriations adequate to meet the same; nor shall the Commission pledge the credit of any of the signatory States, except by and with the authority of the legislature thereof.

"ARTICLE VI

"It is recognized by the signatory States that no single standard for the treatment of sewage or industrial wastes is applicable in all parts of the District due to such variable factors as size, flow, location, character, self purification, and usage of waters within the District. The guiding principle of this compact shall be that pollution by sewage or industrial wastes originating within a signatory State shall not injuriously affect the various uses of the interstate waters as hereinbefore defined.

"All sewage from municipalities or other political subdivisions, public or private institutions, or corporations,

discharged or permitted to flow into these portions of the Ohio River and its tributary waters which form boundaries between, or are contiguous to, two or more signatory States, or which flow from one signatory State into another signatory State, shall be so treated, within a time reasonable for the construction of the necessary works, as to provide for substantially complete removal of settleable solids, and the removal of not less than forty-five per cent (45%) of the total suspended solids; provided that, in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in Article I, in specific instances such higher degree of treatment shall be used as may be determined to be necessary by the Commission after investigation, due notice and hearing.

"All industrial wastes discharged or permitted to flow into the aforesaid waters shall be modified or treated, within a time reasonable for the construction of the necessary works, in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in Article I, to such degree as may be determined to be necessary by the Commission after investigation, due notice and hearing.

"All sewage or industrial wastes discharged or permitted to flow into tributaries of the aforesaid waters situated wholly within one State shall be treated to that extent, if any, which may be necessary to maintain such waters in a sanitary and satisfactory condition at least equal to the condition of the waters of the interstate stream immediately above the confluence.

"The Commission is hereby authorized to adopt, prescribe and promulgate rules, regulations and standards for administering and enforcing the provisions of this article.

ARTICLE VII

"Nothing in this compact shall be construed to limit the powers of any signatory State, or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory State, imposing additional conditions and restrictions to further lessen or prevent the pollution of waters within its jurisdiction.

ARTICLE VIII

The Commission shall conduct a survey of the territory included within the District, shall study the pollution problems of the District, and shall make a comprehensive report for the prevention or reduction of stream pollution therein. In preparing such report, the Commission shall confer with any national or regional planning body which may be established, and any department of the Federal Government authorized to deal with matters relating to the pollution problems of the District. The Commission shall draft and recommend to the governors of the various signatory States uniform legislation dealing with the pollution of rivers, streams and waters and other pollution problems within the District. The Commission shall consult with and advise the various States, communities, municipalities, corporations, persons, or other entities with regard to particular problems connected with the pollution of waters, particularly with regard to the construction of plants for the disposal of sewage, industrial and other waste. The Commission shall, more than one month prior to any regular meeting of the legislature of any State which is a party thereto, present to the governor of the State its recommendations relating to enactments to be made by any legislature in furthering the intents and purposes of this compact.

ARTICLE IX

The Commission may from time to time, after investigation and after a hearing, issue an order or orders upon any municipality, corporation, person, or other entity discharging sewage or industrial waste into the Ohio River or any other river, stream or water, any part of which constitutes any part of the boundary line between any two or more of the signatory States, or into any stream any part of which flows from any portion of one signatory State through any portion of another signatory State. Any such order or orders may prescribe the date on or before which such discharge shall be wholly or partially discontinued, modified or treated or otherwise disposed of. The Commission shall give reasonable notice of the time and place

of the hearing to the municipality, corporation or other entity against which such order is proposed. No such order shall go into effect unless and until it receives the assent of at least a majority of the commissioners from each of not less than a majority of the signatory States; and no such order upon a municipality, corporation, person or entity in any State shall go into effect unless and until it receives the assent of not less than a majority of the commissioners from such state.

It shall be the duty of the municipality, corporation, person or other entity to comply with any such order issued against it or him by the Commission, and any court of general jurisdiction or any United States district court in any of the signatory States shall have the jurisdiction, by mandamus, injunction, specific performance or other form of remedy, to enforce any such order against any municipality, corporation or other entity domiciled or located within such State or whose discharge of the waste takes place within or adjoining such State, or against any employe, department or subdivision of such municipality, corporation, person or other entity; provided, however, such court may review the order and affirm, reverse or modify the same upon any of the grounds customarily applicable in proceedings for court review of administrative decisions. The Commission or, at its request, the Attorney General or other law enforcing official, shall have power to institute in such court any action for the enforcement of such order.

“ARTICLE X

“The signatory States agree to appropriate for the salaries, office and other administrative expenses, their proper proportion of the annual budget as determined by the Commission and approved by the Governors of the signatory States, one-half of such amount to be prorated among the several States in proportion of their population within the District at the last preceding federal census, the other half to be prorated in proportion to their land area within the District.

ARTICLE XI

"This compact shall become effective upon ratification by the legislatures of a majority of the States located within the District and upon approval by the Congress of the United States; and shall become effective as to any additional States signing thereafter at the time of such signing."

SEC. 2. Without further submission of said compact, the consent of Congress is hereby given to the State of Virginia or any other State with waters in the Ohio River drainage basin, entering into said compact as a signatory State and party in addition to the States therein named or any of them.

SEC. 3. The commissioners to represent the United States, as provided in article IV of said compact, shall be appointed by the President.

SEC. 4. Nothing contained in this Act or in the compact herein approved shall be construed as impairing or affecting the sovereignty of the United States or any of its rights or jurisdiction in and over the area or waters which are the subject of such compact.

SEC. 5. The right to alter, amend, or repeal the provisions of section 1 is hereby expressly reserved.

Approved, July 11, 1940.—

APPENDIX C**CHAPTER 38**

(House Bill No. 369—By Mr. Brotherton)

AN ACT approving, ratifying and enacting into law the "Ohio River Valley Water Sanitation Compact" for the prevention, abatement and control of pollution of the rivers, streams and waters in the Ohio river drainage basin and making the state of West Virginia a party thereto; creating the "Ohio River Valley Water Sanitation Commission"; providing for the members of such commission from the state of West Virginia; and providing for the carrying out of said compact.

(Passed March 11, 1939; in effect ninety days from passage. Approved by the Governor.)

SECTION

1. Ohio river valley water sanitation compact approved.
2. Appointment of members of Ohio river valley water sanitation commission; state commissioner of health to be a member ex officio.
3. Powers of commission; duties of state officers, departments, etc.; jurisdiction of circuit courts; enforcement of act.
4. Powers granted herein supplemental to other powers vested in commission.
5. Expenses of commission; appropriations; officers and employees; meetings.
6. When to become effective.

Be it enacted by the Legislature of West Virginia:

Section 1. Ohio River Valley Water Sanitation Compact Approved. The following Ohio River Valley Water Sanitation Compact, which has been negotiated by representatives of the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee and West Virginia, is hereby approved, ratified, adopted, enacted into law, and entered into by the state of West Virginia as a party thereto and signatory state, namely:

(At this point in the Act appears the verbatim text of the Ohio River Valley Water Sanitation Compact which has already been set forth as a part of Appendix B.)

Section 2. Appointment of Members of Ohio River Valley Water Sanitation Commission; State Commissioner of Health to be Ex Officio Member. In pursuance of article four of said compact, there shall be three members of the "Ohio River Valley Water Sanitation Commission" from the state of West Virginia. The governor, by and with the advice and consent of the Senate, shall appoint two persons as two of such commissioners, each of whom shall be a resident and citizen of this state. The terms of one of the said two commissioners first appointed shall be three years and of the other shall be six years; and their successors shall be appointed by the governor, by and with the advice and consent of the Senate for terms of six years each. Each commissioner shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of any of such commissioner from any reason or cause shall be filled by appointment by the governor, by and with the advice and consent of the Senate, for the unexpired term. The third commissioner from this state shall be the commissioner of health ex officio, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said office of commissioner of health, and his successor as a commissioner shall be his successor as said commissioner of health. With the exception of the issuance of any order under the provisions of article nine of the compact, said ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The terms of each of the initial three members shall begin at the date of the appointment of the two appointive commissioners, provided the said compact shall then have gone into effect in accordance with article eleven of the compact; otherwise shall begin upon the date which said compact shall become effective in accordance with said article eleven.

Any commissioner may be removed from office by the governor.

Section 3. Powers of Commission; Duties of State Officers, Departments, etc.; Jurisdiction of Circuit Courts;

Enforcement of Act. There is hereby granted to the commission and commissioners thereof all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of this state are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary to or incidental to the carrying out of said compact in every particular; it being hereby declared to be the policy of this state to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of this state of West Virginia are hereby authorized and directed at convenient times and upon request of the said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal powers respectively.

The circuit courts of this state are hereby granted the jurisdiction specified in article nine of said compact, and the attorney general or any other law-enforcing officer of this state is hereby granted the power to institute any action for the enforcement of the orders of the commission as specified in said article nine of the compact.

Section 4. Powers Granted Herein Supplemental to Other Powers Vested in Commission. Any powers herein granted to the commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said commission by other laws of this state or by the laws of the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee, or by congress or the terms of said compact.

Section 5. Expenses of Commission; Appropriations; Officers and Employees; Meetings. The commissioners shall be reimbursed out of moneys appropriated for such purposes, all sums which they necessarily shall expend in the discharge of their duties as members of such commission.

There shall be appropriated to the commission out of any moneys in the state treasury unexpended and available therefor, and not otherwise appropriated, such sums as

may be necessary for the uses and purposes of the commission in carrying out the provisions of this act and the payment of the proper proportion of the state of West Virginia of the annual budget of the "Ohio River Valley Water Sanitation Commission" in accordance with article ten of said compact.

The commission shall elect from its membership a chairman and may also select a secretary who need not be a member. The commission may employ such assistance as it may deem necessarily required, and the duties of such assistants shall be prescribed and their compensation fixed by the commission and paid out of the state treasury out of funds appropriated for such purposes upon the requisition of said commission.

The commission shall meet at such times and places as agreed upon by the commissioners or upon call of its chairman.

Section 6. When Act to Become Effective. This act shall take effect and become operative and the compact be executed for and on behalf of this state only from and after the approval, ratification, and adoption, and entering into thereof by the states of New York, Pennsylvania, Ohio, and Virginia.

APPENDIX D

THE CONSTITUTION OF WEST VIRGINIA
ARTICLE X*Taxation and Finance*

1. Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value; except that the aggregate of taxes assessed in any one year upon personal property employed exclusively in agriculture, including horticulture and grazing, products of agriculture as above defined, including live stock, while owned by the producer, and money, notes, bonds, bills and accounts receivable, stocks and other similar intangible personal property shall not exceed fifty cents on each one hundred dollars of value thereon and upon all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants, one dollar; and upon all other property situated outside of municipalities, one dollar and fifty cents; and upon all other such property situated within municipalities, two dollars; and the Legislature shall further provide by general law for increasing the maximum rates authorized to be fixed by the different levying bodies upon all classes of property by submitting the question to the voters of the taxing units affected, but no increase shall be effective unless at least sixty percent of the qualified voters shall favor such increase, and such increase shall not continue for a longer period than three years at any one time, and shall never exceed by more than fifty percent the maximum rate herein provided and prescribed by law; and the revenue derived from this source shall be apportioned by the Legislature among the levying units of the State in proportion to the levy laid in said units upon real and other personal property; but property used for educational, literary, scientific, religious or charitable purposes, all cemeteries,

public property, the personal property, including live stock, employed exclusively in agriculture as above defined and the products of agriculture as so defined while owned by the producers may by law be exempted from taxation; household goods to the value of two hundred dollars shall be exempted from taxation. The Legislature shall have authority to tax privileges, franchises and incomes of persons and corporations and to classify and graduate the tax on all incomes according to the amount thereof and to exempt from taxation incomes below a minimum to be fixed from time to time, and such revenues as may be derived from such tax may be appropriated as the Legislature may provide. After the year nineteen hundred thirty-three, the rate of the state tax upon property shall not exceed one cent upon the hundred dollars valuation, except to pay the principal and interest of bonded indebtedness of the State now existing.

(This section, prior to its amendment, read as follows: "Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property, from which a tax may be collected, shall be taxed higher than any other species of property of equal value; but property used for educational, literary, scientific, religious or charitable purposes, all cemeteries and public property may, by law, be exempted from taxation. The Legislature shall have power to tax, by uniform and equal laws, all privileges and franchises of persons and corporations.")

The amendment as above set forth was proposed by House Joint Resolution No. 3, adopted August 6, 1932 (Acts Ex. Sess. 1932, p. 16) and was ratified at the general election in 1932. Vote on the amendment: For ratification, 335,482; against ratification, 43,931; majority 291,551.)

Capitation Tax

2. The Legislature shall levy an annual capitation tax of one dollar upon each male inhabitant of the State who has attained the age of twenty-one years, which shall be annually appropriated to the support of free schools. Per-

sons afflicted with bodily infirmity may be exempted from this tax.

Receipts and Expenditures of Public Monies

3. No money shall be drawn from the treasury but in pursuance of an appropriation made by law, and on a warrant issued thereon by the Auditor; nor shall any money or fund be taken for any other purpose than that for which it has been or may be appropriated or provided. A complete and detailed statement of the receipts and expenditures of the public monies shall be published annually.

Limitation on Contracting of State Debt

4. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State; to suppress insurrection, repel invasion or defend the State in time of war; but the payment of any liability other than that for the ordinary expenses of the State, shall be equally distributed over a period of at least twenty years.

Power of Taxation

5. The power of taxation of the Legislature shall extend to provisions for the payment of the State debt, and interest thereon, the support of free schools, and the payment of the annual estimated expenses of the State, but whenever any deficiency in the revenue shall exist in any year, it shall, at the regular session thereof held next after the deficiency occurs, levy a tax for the ensuing year, sufficient with the other sources of income, to meet such deficiency, as well as the estimated expenses of such year.

Credit of State Not to Be Granted in Certain Cases

6. The credit of the State shall not be granted to, or in aid of any country, city, township, corporation or person; nor shall the State ever assume, or become responsible for the debts or liabilities of any county, city, township, corporation or person; nor shall the State ever hereafter become a joint owner, or stockholder in any company or asso-

ciation in this State or elsewhere, formed for any purpose whatever.

Duties of County Authorities in Assessing Taxes

7. County authorities shall never assess taxes, in any one year, the aggregate of which shall exceed ninety-five cents per one hundred dollars valuation except for the support of free schools; payment of indebtedness existing at the time of the adoption of this Constitution; and for the payment of any indebtedness with the interest thereon, created under the succeeding section, unless such assessment, with all questions involving the increase of such aggregate, shall have been submitted to the vote of the people of the county, and have received three-fifths of all the votes cast for and against it.

Bonded Indebtedness of Counties, Etc.

8. No county, city, school district, or municipal corporation, except in cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed to become indebted, in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five per centum on the value of the taxable property therein to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness; nor without, at the same time, providing for the collection of a direct annual tax, sufficient to pay, annually, the interest on such debt, and the principal thereof, within, and not exceeding thirty-four years: Provided, That no debt shall be contracted under this section, unless all questions connected with the same, shall have been first submitted to a vote of the people, and have received three-fifths of all the votes cast for and against the same.

Municipal Taxes to Be Uniform

9. The Legislature may, by law, authorize the corporate authorities of cities, towns and villages, for corporate purposes, to assess and collect taxes; but such taxes shall be uniform, with respect to persons and property within the jurisdiction of the authority imposing the same.